

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
2 CUPANIA CIRCLE
MONTEREY PARK, CA 91754

DEPARTMENT OF THE TREASURY

Special Letter

Date:

[REDACTED]
[REDACTED]
[REDACTED]

Employer Identification Number:

[REDACTED]

Case Number:

[REDACTED]

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Refer Reply to:

[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted with your application shows that you were incorporated [REDACTED]

Your purpose, as stated in your articles, is "to perpetuate [REDACTED] through education and dissemination of information."

FACTS:

You did not provide an explanation of your activities in your application other than to state that you were organized and operated for charitable, cultural, educational, and scientific purposes. You stated in your application that your activity commenced on [REDACTED] and that it "will be carried on principally in [REDACTED], and where ever else in [REDACTED], and throughout the world where any related activity may be situated."

In response to our request for a more detailed explanation of your activities, you provided three copies of your monthly newsletter. You stated that the newsletter studies, "[REDACTED] history, genealogies, legends, values, humor, and other news of mutual concern." In addition to the newsletter you are planning a 4-day cultural workshop-seminar in [REDACTED]. The workshop will consist of [REDACTED], values, crafts, dance, songs, chants, and histories.

The monthly newsletters are approximately 8-10 pages long. Each issue contains two pages of photographs of current members and their ancestors. There are 1-2 pages of jokes. There are 1-3 pages of social news of your members. Two pages are devoted to news concerning the planning of the [REDACTED]. There is a page of editorial comment regarding local issues.

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According to your letter you devote approximately [REDACTED] hours a month to the newsletter and that a good part of that time is spent "talking, writing, or otherwise linking with others." You claim that it is not possible to give the approximate percentage of your organization's time that is devoted to each of its activities.

Your membership consists of people with [REDACTED] and those who are [REDACTED] at heart with some connection with being born as [REDACTED]. You currently have [REDACTED] members.

ISSUE:

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code?

LAW:

Section 501(c)(3) of the Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the Income Tax Regulations (Regs) relates to the definition of the activities and/or purposes of the organization and operations of the organization under Code section 501(c)(3). It is quoted in part as follows:

"(a) Organizational and Operational Tests. (1) In order, to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an

organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3)...."

Section 1.501(c)(3)-1(a) of the Regs provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regs provides that an organization is organized exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c) of the Regs states that an organization is not operated exclusively for one or more exempt 501(c)(3) purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d) of the Regs states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements, an organization must establish that it is not organized or operated for the benefit of private interest, such as those of its creator.

Revenue Procedure 84-46, Section 5, Cumulative Bulletin 1984-1, page 541 reads in part as follows:

"02...Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is

unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded."

In Better Business Bureau of Washington, D.C., Inc. v. The United States, 326 U.S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall with the claimed exemption, an organization must be devoted to exempt purposes exclusively. The court stated that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption regardless of the number and importance of truly exempt purposes.

In Presbyterian & Reformed Publishing Co. v. C.I.R., 79 T.C. 1076 (1982), the Tax Court found that the manner in which the organization conducted its activities revealed a non-exempt commercial purpose that was substantial in nature. In making the determination, the court noted that where a non-exempt purpose is not an expressed goal of the organization, courts have nonetheless focused on the manner in which the organization conducts its activities, implicitly reasoning that an end can be inferred from the means chosen to attain it. If, for example, an organization's management decisions replicate those of commercial enterprises, it is fair to infer that at least one purpose of the organization is commercial.

In Sun-Herald Corp v. Duggan (1934, CA2) 73 F2d 198, 4 USTC 1355, 14 AFTR 590, cert den (1935) 294 US 719, 79 L ED 1251, the court held that in order to qualify as exempt, an organization must fall precisely within the terms of the statute.

In New York Trust Co v. U.S. 2/14/27, CT Cl, 1 USTC 197, 6 AFTR 6554, the court held that statutes granting exemptions are strictly construed, and the taxpayer has the burden of showing clearly that it is within the exemption claimed.

ANALYSIS AND CONCLUSION:

All of the preceding Code sections, Income tax Regulations, Revenue Procedure and Court Cases describe the criteria under which an organization may be exempt as an organization described in section 501(c)(3) of the Code and when an organization is deemed not to be exempt under section 501(c)(3) of the Code.

In order to qualify for exemption under Code section 501(c)(3) an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, there can be no inurement of private benefit to any individual, organization, etc.

Based on the actual activities as submitted, the primary purpose of your organization is social and recreational. Your activities are centered around a monthly newsletter and for [REDACTED], a proposed 4-day cultural and educational workshop. Most of the newsletter is devoted to reporting the social activities of your members, the publishing of members photographs, a page or two of jokes and a page of editorial comments. The remaining pages of the newsletter provide information regarding the upcoming workshop which may or may not be conducted on a yearly basis.

The [REDACTED] edition of your newsletter states that if the organization is supported by contributions for cultural and educational purposes, your members can convert personal expenses such as travel, meals, and auto expenses, into a tax deductible contribution for tax purposes for your members. This is not a correct statement and misleading to your members.

Since more than an an insubstantial part of your organization's activities are in furtherance of social activities it is not operated exclusively for educational/cultural purposes. Your social activity is not insubstantial and is not in furtherance of an exempt purpose under section 501(c)(3) of the Code.

Although you are planning a 4-day workshop in which there will be some educational and cultural activities, this does not render your organization's activities exclusively educational and cultural within the meaning of Code section 501(c)(3).

It is the position of the Internal Revenue Service, based on the information submitted, that you are not entitled to exemption from Federal income tax as an organization described in Code section 501(c)(3), inasmuch as you are not organized or operated exclusively for the purpose specified in that Code section.

If you are in agreement with this proposed determination, we recommend that you sign and return the enclosed agreement, Form 6018. Please note the instructions for signing on the reverse side of the form.

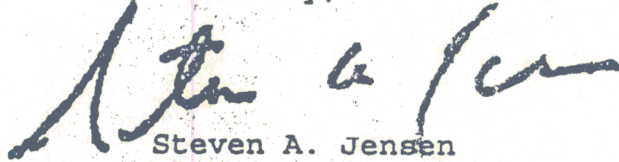
If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal

Revenue Code provides in part that, "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,



Steven A. Jensen
District Director

Enclosure(s):
Publication 892
Form 6018